



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/153678

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner was over-issued FoodShare benefits between February 1, 2013 and June 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pamela Hazley, HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 30, 2013, the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], indicating that she was overissued FoodShare benefits in the amount of

\$785.00 for the period of February 1, 2013 to June 30, 2013, due to non-client/agency error. (Exhibit 2, pg. 25)

3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 20, 2013. (Exhibit 1)
4. Petitioner completed a FoodShare interview in December 2012, at which time she provided two pay stubs from [REDACTED] dated 12/07/12 and 12/21/12. (Exhibit 2, pgs. 10, 14, and 15)
5. On July 31, 2013, the Petitioner completed her Six Month Report Form, called the agency and reported that her employment with [REDACTED] ended on or about March 31, 2013. (Exhibit 10)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook (FSH)*, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency’s case and establish facts sufficient overcome the county agency’s evidence of correct action.

In the case at hand, the agency asserts that it did not correctly calculate Petitioner’s income when it received her paystubs from [REDACTED] in December 2012, because it did not include her income from tips or production (which Petitioner explained is essentially a commission on the number of haircuts completed and hair care products sold). The agency recalculated Petitioner’s income and determined that an overpayment of FoodShare benefits occurred between February 1, 2013 and June 30, 2013.

It is clear that looking at Petitioner’s pay checks, that the agency did underestimate her income, which more likely than not, caused an overpayment of benefits. However, it does not appear the amount of the overpayment was correctly calculated.

The agency’s case comments indicate that the Petitioner’s employment with [REDACTED] ended in March 2013. Petitioner testified to the same. Consequently, the agency will have to review, verify and recalculate Petitioner’s income for April, May and June 2013.

The Petitioner also testified that her tips and “production” income varied, which would make sense, since they would be based upon the number of customers, the customer’s propensity for tipping, the quality of the service and their inclination to purchase hair care products.

FSH §1.2.4.2 states:

If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the agency and the household may use a longer period of past time, if it will provide a more accurate indication of anticipated fluctuations in future income. To average widely fluctuating income, use the household’s anticipated income, including fluctuations anticipated over the certification period. In any case, make every attempt to accurately verify prospective income and clearly document the reasoning for the prospective income estimate.

Thus, because Petitioner's tip and "production" income likely fluctuates, the agency would have to examine her tip and production income over a longer period of time. For this reason, the agency will also have to review its income determination for February 2013 through March 2013 and if necessary send out requests for verification from the Petitioner and her employer. (The Petitioner has primary responsibility for providing required verification, but the local agency must assist her in obtaining verification, as long as she is cooperating with the agency. *See* FSH §1.2.1.3)

If the Petitioner disagrees with new overpayment amount, Petitioner can file a NEW request for fair hearing.

CONCLUSIONS OF LAW

1. The agency correctly determined that Petitioner was overissued FoodShare benefits.
2. The agency's calculation of the overpayment was not correct.

THEREFORE, it is

ORDERED

That the agency:

- 1) Request from Petitioner and her former employer, [REDACTED], verification of her income / end of employment between February 1, 2013 and June 30, 2013.
- 2) Immediately upon receipt of that verification, recalculate Petitioner's overpayment amount, taking into consideration the fluctuation of her tip / productivity income and her termination from [REDACTED].
- 3) Issue to the Petitioner an amended Notification of FoodShare Overissuance reflecting the correct overpayment amount.

The agency shall take all administrative steps necessary to complete these tasks within 15 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

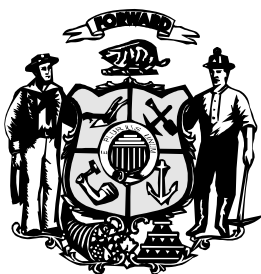
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of February, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 21, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability